



MEMORANDUM

TO: Western State Foresters and Territorial Foresters

FROM: Amie Brown, Acting Legislative Director

SUBJECT: Questions and Answers on Roadless Area Conservation Final Rule

DATE: May 31, 2005

On May 23, 2005, the Western Forestry Leadership Coalition participated in a conference call with the U.S. Department of Agriculture and the Western Governors' Association about the Roadless Area Conservation Final Rule. During this call several questions were raised regarding the State petition process, associated costs, and the role of the Roadless Area Conservation Rule advisory council. Officials from the Administration made it abundantly clear that the process is flexible and that assistance would be provided whenever possible.

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Questions and Answers Roadless Area Conservation Final Rule

1. Q: Why is USDA's Forest Service replacing the 2001 Roadless Area Conservation Rule with a state petitioning process for governors; what happened to the 2001 rule?

A: In July 2003, a Federal judge determined that the 2001 roadless rule violated the law (NEPA and The Wilderness Act) and set the rule aside under a permanent injunction prompting the Forest Service to develop a new rule. www.roadless.fs.fed.us

2. Q: What does the new rule do?

A: The final rule establishes a process for states to request the Secretary of Agriculture to change all or a portion of the management direction for roadless areas in their state through State-specific rulemaking. In addition, the new rule calls for a national advisory committee to be established to provide advice and counsel to the Secretary on the implementation of the rule. During the petitioning process, the Forest Service's interim directive for protecting roadless areas remains in place. Set in place on July 16, 2004, interim directive (69 FR 42648) will remain in place until January 16, 2006, and the Forest Service may renew the interim directive for an additional 18 months. This interim rule reserves most decisions on timber harvesting and road building projects in these areas to the chief and regional foresters.

3. Q: How will the petitioning process work?

A: State Governors will have 18 months to submit petitions. These petitions must identify the circumstances and reasons why a change is necessary, including for the conservation of roadless values and characteristics, the reduction of wildfire risks to communities and critical wildlife habitat, and the protection of public health and safety, and critical infrastructure facilities.

If the Secretary grants a petition, the Forest Service will work with the state to develop a state-specific rule that addresses the proposed changes put forth in the petition. The required environmental analysis and public involvement activities will be conducted as part of this rulemaking.

4. Q: Must a petition cover all roadless areas in a state or can it apply to a portion of the roadless areas?

A: A state has the option to include all or a portion of its roadless areas in a petition. For example, a governor could agree with most of a Forest Service's land management plan with the exception of one area. He or she could then submit a petition for modification of the management direction on that one roadless area. A governor may also propose the petition to be as inclusive as he or she wants it to be.

5. Q: How much will it cost the states' to petition?

A: According to USDA estimates, the costs for an individual State submitting a petition could range from \$25,000 to \$100,000. The Western Governors' Association expressed concern that this estimate may be low. However, the USDA believes that the majority of usual cost, that of gathering information, has already been done in previous rule making processes and that the remaining costs will only be those of analysis. Governors considering submitting a petition to the Secretary for State-specific rulemaking can request that the Forest Service provide the State with existing information and management requirements for their review.

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6. Q: How much will it cost the states' to become a cooperating agency?

A: If a petition is submitted and accepted, the rulemaking process will be conducted by the Forest Service and the State will play the cooperating agency role in the environmental analysis (NEPA) documentation. The Forest Service and the State will document the expectations of the State's participation as a cooperating agency in a Memorandum of Understanding. For example, it might be agreed that the state personnel would be available to attend meetings or provide review and comment on documents.

7. Q: What role will the advisory committee play in the petition process?

A: The Advisory Committee was established to assist the Secretary in implementing the final rule. It will offer a third-party perspective on the management requirements proposed by a governor with the goal of securing the widest possible buy-in for the state petition. The committee will have 90 days to review a petition and provide advice and recommendations to the Secretary. It will also provide input for decisions made by the Secretary under the rule, including whether to request additional information from a petitioner, the Secretary's response to a petition, the nature and extent of appropriate National Environmental Policy Act documentation associated with the development of a state-specific rule, and the Secretary's final decision on promulgating a state-specific rule.

8. Q: Who can serve as members of the advisory committee?

A: Approximately twelve individuals representing diverse national organizations interested in the conservation and management of National Forest System inventoried roadless areas will make up the committee. Nominations will be solicited by the USDA and the Secretary will select all 12 members. As specified in the Federal Register, nominations to the Roadless Area Conservation National Advisory Committee must be received by June 27, 2005.

9. Q: How long will the advisory committee be in place?

A: This will depend upon how the charter, which is yet to be developed, is framed. The expectation is that individual advisory committee members will be asked to serve a term of two years.

10. Q: What are the timeframes involved with the new rule?

A: Governors have until November 13, 2006 to submit petitions to the Secretary of Agriculture?

The nominations of members to the Roadless Area Conservation National Advisory Committee must be received by June 27, 2005.

The federal advisory committee will have 90 days to review and provide advice and recommendations to the Secretary on a petition.

The Secretary has a total of 6 months to respond to a petition. This 6-month timeframe will run concurrently to the advisory committee's 90 days.

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11. Q: What happens if a state declines to file a petition?

A: States whose governors elect not to file petitions, the conservation and management direction for these areas will continue to be guided by current land management plans. The interim directive will remain in effect as well.

12. Q: Who is the final decisionmaker on state petitions?

A: The Secretary of Agriculture will make the final decision on a petition.

13. Q: What happens if the Secretary of Agriculture denies a state petition?

A: The Secretary has the option of denying a state's petition, but the goal is to work cooperatively with states to come up with the best management plan for conserving roadless areas and their values. That may include working on a state-specific rule, amending a forest or grassland plan or through a negotiation process to create another solution. States are expected to submit petitions generated through local collaboration and a working in good faith with public input.

14. Q: What is the timeframe for the Forest Service to undertake approved state-specific rules?

A: There is no set timeframe for a state-specific rule to be conducted. The Forest Service will coordinate with the state to work out the action items and tasks for that rulemaking efforts at that time. It depends upon what the rulemaking would entail. The USDA has suggested that the process will be completed in 14 months following the end of the 18 month petition period.

15. Q: What is considered an inventoried roadless area?

A: The Clinton administration announced its Roadless Area Conservation Rule in January 2001. The rule that affected 58.5 million acres (roughly one-third of the National Forest System) by putting these areas off limits to road building and timber harvesting. In developing that 2001 rule, the Forest Service used information provided by local units. Most of the 58.5 million acres were identified in forest and grassland plans as potential wilderness. However, some of that information was dated from as far back as the late 1970s. Since the release of the 2001 Roadless rule, 22 land management plans have been revised and 43 are currently in the plan revision process. Therefore, a forest or grassland—in collaboration with local communities—might have made some changes to these areas' boundaries during their forest or grassland planning process. The total acreage of all roadless areas to be roughly 56 million acres. However, the best and most accurate source of information on a particular inventoried roadless area is the national forest or grassland where it is located.